IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9197 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HITESH DEVABHAI SHARMA

Versus

STATE OF GUJARAT

Appearance:

MR ANSHIN H DESAI for Petitioner

Mr.Joshi, Assistant GOVERNMENT PLEADER, for Respondent No. 1

RULE SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 15/06/2001

ORAL JUDGEMENT

1. By consent of the parties, the matter is taken up for final hearing today.

2. The petitioner is seeking compassionate appointment. It is the case of the petitioner that his father was serving as Clerk in Government Service. During the subsistence of his service, he died. The petitioner, as his son, sought compassionate appointment, but his prayer was rejected.

3. Initially, by an order dated 3.3.2000, the petitioner was informed that since the income of the family is more, his case could not be considered. The petitioner seems to have approached this Court earlier, but he was asked to make representation. The petitioner thereafter made a representation. An order dated 11.10.2000 was passed, by which the Government took the view that since the income of the family of the deceased was more than the required criteria, no compassionate appointment can be given. While calculating the income, pension received by the family members of the deceased is taken into consideration.

4. At the time of hearing of this petition, it was argued by Mr.Desai that while considering the total income, the Department has considered the income of the pension of the family of the deceased. He placed reliance on a decision of this Court dated 1.1.1999 in Special Civil Application No.11020 of 1993 in the case of Dilipsinh B. Rathod v. State of Gujarat. This Court has taken the view in the aforesaid judgment that while considering the total income of the family of the deceased, income of the pension is not required to be taken into consideration. In paragraph 3, it has been observed by this Court as under :-

... ...

> 3. Learned counsel for the petitioner has argued that while computing the monthly income for the purpose of examining the eligibility for seeking appointment on compassionate grounds, the family pension cannot be included and the appointment on compassionate grounds cannot be denied on the ground of receipt of family pension. To buttress his argument, the learned counsel for the petitioner has placed reliance on a decision of this Court in the case of C.B. Maru v. Dhanduka Nagar

Panchayat, reported in 1993(2) G.L.H. 822 and yet another decision of this Court in the case of Manubhai Gothabhai Desai v. State of Gujarat and Ors., reported in 1998(1) GLH (UJ) 23. In C.B. Maru's case (supra), this Court while placing reliance in the case of Smt. Phoolwati v. Union of India and ors., reported in AIR 1991 SC 469, has taken the view that merely because the widow of the deceased employee was entitled to some retiral benefits, that by itself can never be made ground to refuse appointment to the son of the deceased employee on compassionate grounds. In that case, the widow of the deceased employee was getting a family pension of Rs.645/per month and her husband had died on 15th October, 1990. In the case of C.B. Maru (Supra), the other details of income regarding Dearness Allowance, Medical Allowance, etc. had not been given, but looking to the amount of family pension of Rs.645/-, it is obvious that if the Dearness Allowance, and Medical Allowance had been taken into consideration, the income may have exceeded Rs.1,000/-. In the present case, the father of the petitioner had died in April 1991 and, in the case of C.B. Maru (Supra), the date of the death of deceased is October, 1990 and, therefore, there is hardly a difference of about six months in the date of the death. Even if 505 Dearness Allowance is added to Rs.645/-, it would come to Rs.645/- + Rs.322.50, i.e. Rs.967.50 and to that, even if the Medical Allowance of Rs.75/- is added or even Rs.50/-, it would exceed Rs.1,000/-. In any case, the fact remains that this Court has taken the view in the case of C.B. Maru, that appointment on compassionate grounds cannot be denied on the ground of receipt of retiral benefits including the amount of family pension. In another case of Manubhai Gothabhai Desai (Supra) this Court, while placing reliance on C.B. Maru's case (supra), has categorically observed that while computing the income of the family, the amount of pension ought not to have been considered. In this view of the matter, there remains no scope to sustain the stand taken by the

respondents to take the monthly income of the family in the present case to be more than Rs.1,000/- merely because the widow i.e. petitioner's mother is getting Rs.450/- and the total income of the pension is Rs.908/-. If the income of the pension is not to be included as has been held by this Court in the cases aforesaid, the monthly income of the petitioner's family would certainly come out to be less than Rs.1,000/- and therefore, this Court has no hesitation in holding that the stand taken by the respondents and the denial of the consideration of the petitioner's case for appointment on compassionate grounds as has been taken by the respondents and conveyed to the petitioner is not at all tenable in eye of law. On such grounds, the petitioner's application could not be rejected for appointment on compassionate grounds. The communication sent to the petitioner as contained in Annexure `A' dated 9.6.1992 rejecting his application is, therefore, set aside. The respondents are directed to consider the petitioner's application for appointment on compassionate grounds in accordance with law and in doing so, the appointment shall not be denied to the petitioner on the ground that the monthly income of the family exceeds Rs.1,000/-. The respondents are directed to take a decision on the petitioner's application for appointment on compassionate grounds, at the earliest possible opportunity and issue appropriate orders in accordance with law within a shortest possible period, but in no case, later than a period of one month from the date a copy of this order is served upon the respondent authority. This Special Civil Application is accordingly allowed and the Rule is made absolute in the terms aforesaid. It would be open for the petitioner to serve the certified copy of this Order and for that purpose, direct service is permitted.

... ..."

In that view of the matter, the matter is now again required to be sent back to the State Government

for arriving at the correct figure of the income family members of the deceased. While calculating that income, the pension amount received by the family members of the deceased should not be taken into consideration in view of the view taken by this Court, of which reference is made earlier. The petition is accordingly allowed. The impugned order is quashed and set aside. The respondents are directed to take fresh decision in the matter as early as possible preferably within a period of three months from the date of receipt of the writ of this order and as per the directions and observations made hereinabove. The writ of this order to be sent forthwith. Rule is made absolutely accordingly, with no order as to costs.

15th June, 2001 (P.B. Majmudar, J.)

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(apj)